

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

United States of America

v.

Case No. 2:97-cr-167-6

Michael Lee Gordon

OPINION AND ORDER

On April 3, 2020, defendant filed a motion for reduction in sentence pursuant to 18 U.S.C. §3582(c)(1)(A)(i) based on alleged extraordinary and compelling circumstances. On April 15, 2020, the defendant's motion was denied due to his failure to exhaust administrative remedies as required under §3582(c)(1)(A). On May 5, 2020, defendant filed an amended supplemental motion for relief under §3582(c)(1)(A)(i), arguing the merits of his request. However, defendant still does not allege that he has exhausted his administrative remedies, nor has he presented any proof of such exhaustion.

Before the defendant can file a motion for reduction in sentence for "extraordinary and compelling reasons" under that section in the district court, the defendant must first ask the warden to file a motion for a reduction in sentence on his behalf. If that request is denied by the warden within thirty days, defendant must exhaust all administrative appeals before filing a motion in district court. If, on the other hand, the defendant presents his request to the warden and receives no response within thirty days, he may then file a motion in the district court. See United States v. Daniels, No. 4:08-CR-0464-SLB, 2020 WL 1938973 at *2-3 (N.D. Ala. Apr. 22, 2020); Guzman v. United States, No. 2:10-CR-161, 2019 WL 1966106, at *2 (E.D.Tenn. May 2, 2019). The exhaustion requirement contained in §3582(c)(1)(A) is jurisdictional

and cannot be waived. See, e.g., United States v. Raia, ____ F.3d ____, 2020 WL 1647922, at *2 (3d Cir. Apr. 2, 2020); United States v. Dickson, No. 1:19-cr-251-17, 2020 WL 1904058, at *2-3 (N.D. Ohio Apr. 17, 2020); United States v. Alam, No. 15-20351, 2020 WL 1703881, at *2 (E.D. Mich. Apr. 8, 2020).

Defendant does not allege that he has exhausted his administrative remedies. The amended supplemental motion for reduction in sentence is denied without prejudice due to defendant's failure to exhaust her administrative remedies. The court will address the merits of defendant's argument after he submits sufficient evidence to establish that he has exhausted his administrative remedies.

Date: May 6, 2020

S/James L. Graham
James L. Graham
United States District Judge